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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,891	04/18/2005	Tillmann Dorr	P2107-261	1482
2352 7590 09/22/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER WEIER, ANTHONY J				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
09/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,891

Applicant(s)

DORR ET AL.

Examiner

Anthony Weier

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 22-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date 7/21/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species A (claims 1-11 and 22-34) in the reply filed on 6/27/08 is acknowledged.

Claim Rejections - 35 USC § 112, 2nd

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 and 22-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 32, the reference to "of extract of plants and/or of plant parts" is indefinite in that it is not clear whether the alternative "plant parts" is an extract or simply "plant parts."

Claim 10 is indefinite as to the scope of same. In particular, it is not clear whether same is limited to the "such as whisky..." recitation or not.

- Claim 32 is indefinite with regard to the presence of the second recitation of "or" in line 5. In other words is the powder comprised of isomaltulose, water, plants, plants parts or fruit flavors?

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 and 22-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakazawa et al taken together with Goodfriend or JP 2000279086.

Nakazawa et al discloses an instant beverage powder that comprises isomaltulose (i.e. palatinose), taste substances from taste giving plant parts (e.g. gourd powder and tea and/or coffee powder), lubricants (flow promoters) such as silicon dioxide, coloring agents (inherently either natural or synthetic), vitamins (e.g. vitamin D), minerals, trace elements (e.g. in the gourd powder itself), intense sweeteners (e.g. saccharin) and inherently very little and consistent with a powder material and, therefore, well within the range called for in the instant claims.

Nakazawa et al is silent regarding the presence of urea in the beverage powder disclosed therein. However, it is well known to include urea in beverages that contain refined carbohydrates so as to help prevent and reduce the incidence of tooth decay and help aid the digestion of refined carbohydrate foods (e.g. col. 1, lines 28-45). Nakazawa et al discloses the presence of various refined carbohydrates including the refined sugars recited and starches (see lubricants). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated urea in the beverage product of Nakazawa et al for such advantages/effects. In addition or in the alternative, JP 2000279086 teaches the inclusion of urea in beverage products simply as a source for protein, particularly if the product is a health drink product. It would have been further obvious to have included urea in the product of Nakazawa et al for just such reason.

Nakazawa et al is silent regarding the particular amounts of said ingredients as recited in the instant claims. It would have been further obvious to have arrived at such amounts as result

effective variables depending on, for example, the particular degree of result or effect desired from each said ingredient.

Nakazawa et al is silent regarding the particular type of tea powder employed. However, oolong, green, and black tea powders used to prepare beverages are notoriously well known, and it would have been obvious to have employed any one of said powders as a matter of preference depending on, for example, the flavors desired in the final beverage product.

The claims call for the particular type of coloring agents that are included. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at the claimed coloring agents as a matter of preference depending on, for example, availability, beverage coloring desired, and cost considerations.

Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1794

/Anthony Weier/
Primary Examiner, Art Unit 1794

Anthony Weier
September 16, 2008